

TRANSCRIPT OF PROCEEDINGS

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

IN THE MATTER OF:

MB DOCKET NO. 04-191

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF:

SAN FRANCISCO UNIFIED
SCHOOL DISTRICT

MB Docket No. 04-191

For Renewal of License for
Station KALW(FM),
San Francisco, California

Facility ID No. 58830
File No. BRED-19970801YA

Volume 7

Friday,
June 10, 2005

The above-entitled matter came on for
hearing, pursuant to notice, at 9:15 a.m.

BEFORE:

RICHARD L. SIPPEL,
Chief Administrative Law Judge

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ALSO PRESENT:

ANGELA MILLER, Deputy General Counsel,
San Francisco Unified School District

I-N-D-E-X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Nicole Sawaya		1355	1463	1513
FURTHER			1523	

EXHIBITSID REC'DEnforcement Bureau

EB-4	Jason Lopez Testimony	1354
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Start Time: 9:15 a.m.

End Time: 1:58 p.m.

1 P-R-O-C-E-E-D-I-N-G-S

2 (9:15 a.m.)

3 JUDGE SIPPEL: It's Friday morning, the
4 10th of June, 9:15, and the witness, Ms. Sawaya, is on
5 the stand.

6 You're still under oath, ma'am.

7 WHEREUPON,

8 NICOLE SAWAYA

9 was recalled for examination and, having been
10 previously duly sworn, resumed the witness stand, was
11 further examined and testified as follows:

12 THE WITNESS: Thank you.

13 JUDGE SIPPEL: Did you talk to anybody
14 about your testimony?

15 THE WITNESS: Only counsel.

16 JUDGE SIPPEL: Thank you.

17 Does anybody have anything preliminary
18 that they want to cover this morning? Raise? No?

19 All right. I've got a spot quiz. What do
20 we need to do as a preliminary matter this morning?
21 Anybody know? That we talked about on the 26th of
22 May.

1 MS. LEAVITT: Setting a schedule for
2 filings?

3 JUDGE SIPPEL: (Laughing) Well, we
4 already talked about that but, no, what we didn't do
5 is we left out -- we didn't introduce Jason Lopez's
6 testimony, because he was going to be here on the
7 stand. And so if -- it will be deferred until he --
8 he came.

9 So what I'd like to do this morning as a
10 preliminary matter is have it moved into evidence. It
11 certainly doesn't impair the validity of his
12 testimony. Let's see. What was the exhibit number on
13 that?

14 MR. SHOOK: 4. Bureau 4.

15 JUDGE SIPPEL: Here it is. Testimony of
16 Jason Lopez. It was marked for identification on
17 May 26th, and Mr. Lopez has appeared. If there was
18 any questions about anything in his testimony, it was
19 clarified on the record. So it's appropriate -- I
20 will entertain a motion to receive it into evidence at
21 this time.

22 MR. SHOOK: The Bureau would move it into

1 evidence.

2 JUDGE SIPPEL: Objection?

3 MR. PRICE: None.

4 JUDGE SIPPEL: The testimony of Jason
5 Lopez is received as Bureau Exhibit Number 4. Thank
6 you.

7 (Whereupon, the above-referred
8 to document, previously marked
9 as Bureau Exhibit No. EB-4 for
10 identification, was admitted
11 into evidence.)

12 Where are we now? We're with -- Ms.
13 Leavitt, you're in your cross examination.

14 MS. LEAVITT: Yes, Your Honor.

15 JUDGE SIPPEL: You may continue, please.

16 MS. LEAVITT: Thank you. I think we had
17 left off yesterday with EB Exhibit 21, the March 8,
18 2001, memo from Ms. Sawaya to Mr. Sanchez re the KALW
19 and FCC letter dated 2/5/05. And while you're getting
20 your documents out, you might also want to have
21 available EB Exhibit 13, which is the February 5,
22 2001, FCC Letter of Inquiry to KALW.

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1 CROSS EXAMINATION (cont'd)

2 BY MS. LEAVITT:

3 Q Looking at EB Exhibit 21, which is the
4 LOI, page 2, question 2 --

5 MR. PRICE: Excuse me. Exhibit 21 is the
6 March 8th memo.

7 MS. LEAVITT: I'm sorry. EB Exhibit 31 --
8 13. Boy, I'm dyslexic this morning.

9 BY MS. LEAVITT:

10 Q EB Exhibit 13, the LOI dated 2/5/01,
11 page 2, item 2. The Commission directed SFUSD to
12 respond to the following question. "On August 1,
13 1997, did the KALW(FM) public inspection file contain
14 all of the issues/programs lists required by then
15 Section 73.3527? Did any lists that were in the file
16 contain the information required by Section 73.3527?"
17 And then, as a subset A, "If the answer is no to
18 either inquiry, detail any omission or deficiency."

19 Ms. Sawaya, had you seen a copy of that
20 question?

21 A Yes.

22 Q And looking at EB Exhibit 21, your

1 March 8th memo re the FCC letter, looking at item
2 number 2, how did you respond to that question?

3 A I responded with a no.

4 Q And how did you arrive at that conclusion?

5 A Since I wasn't there in 1997, I was
6 dependent upon the narrative of the Operations
7 Manager, Bill Helgeson, who explained to me about the
8 Loma Prieta earthquake.

9 JUDGE SIPPEL: I want to be a little bit
10 careful here, because we've got the transcript. When
11 you asked her -- her answer no was in connection with
12 her response to the memorandum of March 8th to Mr.
13 Sanchez. This was not a response on her part to the
14 FCC with respect to that question.

15 MS. LEAVITT: Yes, Your Honor. Thank you
16 for the clarification.

17 JUDGE SIPPEL: All right. Okay. I want
18 to be sure it's clear in the transcript.

19 MS. LEAVITT: Right. Thank you.

20 JUDGE SIPPEL: All right.

21 MS. LEAVITT: Thank you very much.

22 BY MS. LEAVITT:

1 Q You say that you required the information
2 from Mr. Helgeson. Did you have any other source for
3 basing your response to Mr. Sanchez on March 8, 2001,
4 on which you relied?

5 MR. PRICE: Objection. Are you referring
6 specifically to question 2?

7 MS. LEAVITT: Yes. This is all about
8 question 2, and I'll try to signal when I've moved on
9 from question 2.

10 THE WITNESS: Not that I can recall.

11 BY MS. LEAVITT:

12 Q How long do you think it took Mr. Helgeson
13 to explain the situation to you?

14 A It was over a period of some -- maybe a
15 week, a few days.

16 Q So he advised you -- I think you said
17 yesterday he advised you orally of his narrative?

18 A Yes, that's correct.

19 Q And as he was advising you, were you
20 typing up the memo at that time?

21 A No. I think it was during a process of
22 becoming acquainted with the station --

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1 Q Okay. So it --

2 A -- and what was going on.

3 Q I'm sorry. When he was telling you about
4 the history of the station, did you take notes of his
5 comments and narrative?

6 A I don't recall taking notes, no.

7 Q Okay. Okay. Referring back now to EB
8 Exhibit 13, the FCC LOI dated February 2nd --
9 February 5, 2001, page 3 -- I'm sorry, it's still
10 page 2, the bottom of page -- no, page 3, I'm sorry,
11 question 4. At the top of the page the FCC is asking,
12 "If the answer to any of the above questions is no,"
13 meaning questions 1 through 3, "detail when precisely
14 what steps were instituted to correct any problem and
15 ensure that the public inspection file contained all
16 requisite materials." Did you read that question, Ms.
17 Sawaya?

18 A I did.

19 Q Okay. Now, referring back to EB
20 Exhibit 21, your March 8th memo re the KALW and FCC
21 letter, looking at item number 4, you indicated that
22 you have -- you said, "KALW did ownership reports for

1 1993 and '95, and we have brought all ownership
2 reports up to date with the most recent being
3 January 31, 2001."

4 Now, in regards to that sentence, when you
5 say "we brought all ownership reports to date," who
6 were you referring to?

7 A I imagine I was referring to both myself
8 and Mr. Helgeson, and then the signature of my
9 supervisor, Jackie Wright.

10 Q Okay. And do you recall approximately how
11 long it would have taken to get the forms typed up,
12 signed, and attached to your memorandum?

13 A No, I do not.

14 Q Okay. I'm sorry. Strike that, please.
15 In 1993 and '95, those were already -- where were
16 those reports? Where did you find those ownership
17 reports?

18 A I believe they were in the ownership
19 report file in the public inspection file.

20 Q Okay. Moving on to the second sentence in
21 point 4, "KALW's reports were spottily corrected
22 during the late 1990s." Now, how did you arrive at

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1 the conclusion that they were spottily corrected
2 during the late 1990s?

3 A As I stated in my direct testimony
4 regarding my memorandum to Mr. Sanchez, I was
5 dependent upon the institutional memory of the people
6 that had been there at the time, most notably
7 Operations Manager Bill Helgeson.

8 Q Did you speak to anybody else?

9 A There was nobody there at the time, no, I
10 did not.

11 Q Okay. Because I'm trying to think, was
12 Rose Levinson still at the station at that time when
13 you started in March 2001?

14 A Ms. Levinson was in a capacity as a
15 volunteer programmer, and she would come in on Monday
16 nights.

17 Q Did you speak to her about her
18 institutional knowledge?

19 A No.

20 Q Okay. Did you speak to Mr. Ramirez to
21 acquire that information?

22 A No, I did not.

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1 Q Okay. Referring back now to page 3 of EB
2 Exhibit 13, the LOI, third page, there's the fifth
3 question which reads, "As of the date of this letter,"
4 which was February 5, 2001, "is the KALW(FM) public
5 inspection file now complete?" Ms. Sawaya, did you
6 read and understand that question?

7 A I did.

8 Q Okay. Referring to EB Exhibit 21, your
9 annotation 5, it says, "Ownership reports are now
10 completed and current." What ownership reports would
11 that have included? For what years?

12 A I believe the years 1999, 2000, and 2001.

13 Q Okay. And then, the third sentence in
14 that paragraph, "Issues and programs lists are
15 current, and back listings are in the process of being
16 completed to the best of our ability." What did you
17 mean by "back listings"?

18 A I imagine I meant the quarterly
19 issues/programs lists.

20 Q Do you recall what time period those
21 quarterly programs/issues lists would have covered?

22 A The '90s.

1 Q Okay. Thank you. Now, moving on to
2 another exhibit, EB Exhibit 19, which is an e-mail
3 from William Helgeson to Mr. Ernest T. Sanchez, dated
4 Wednesday, March 7, 2001, and the subject is re public
5 inspection file requirements. Do you see that, Ms.
6 Sawaya?

7 A I do.

8 Q In the body of the text of this message,
9 right at the top, Mr. Helgeson -- Bill -- writes to
10 Ernie, "Thanks. I'll share with Nicole." And beneath
11 that response there are several pages that contain
12 47 CFR 73.3527, which is the Commission's rules
13 regarding public inspection file.

14 And my first question to you is: did you
15 receive this e-mail? You wouldn't have received this
16 e-mail, I'm sorry. Did Mr. Helgeson share this e-mail
17 with you?

18 A I would imagine that Mr. Helgeson printed
19 it out and shared it with me.

20 Q Do you have any idea of when he might have
21 shared it with you?

22 A Not exactly.

1 Q Did you make any use of this e-mail and
2 the 47 CFR 73.3527 explanation?

3 A I always find it helpful to get as much
4 knowledge about our regulations that we must abide by.
5 Yes, it was helpful.

6 Q Did you use it when you were reviewing the
7 public inspection file in preparing the response to
8 the March 8th memo?

9 MR. PRICE: Objection. Are you referring
10 to preparing her memo to Mr. Sanchez?

11 MS. LEAVITT: Yes.

12 MR. PRICE: I just wanted to make sure the
13 record is clear. As the Judge pointed out before, she
14 didn't prepare the response to that in preparing this
15 memo to Mr. Sanchez, correct?

16 MS. LEAVITT: Right. The March 8th memo.

17 MR. PRICE: I just wanted to make sure the
18 record is clear. Okay.

19 JUDGE SIPPEL: So noted. Do we have a
20 question outstanding now?

21 MS. LEAVITT: Yes. I'm sorry, Your Honor.

22 BY MS. LEAVITT:

1 Q Do you recall using this list when you --
2 in preparing your memo, March 8th memo, to Mr.
3 Sanchez?

4 A No, I don't.

5 Q Okay. Okay. Ms. Sawaya, looking at SFUSD
6 Exhibit T-3 -- that's your direct testimony -- page 8,
7 and specifically referring to lines 5 to 25 --

8 MR. PRICE: Do you want the witness to
9 read lines 5 through 25?

10 MS. LEAVITT: Yes.

11 THE WITNESS: Out loud?

12 MS. LEAVITT: To yourself. I'm sorry.

13 BY MS. LEAVITT:

14 Q Are you finished?

15 A I'm finished.

16 Q In this question, Mr. Shook -- I'm sorry.
17 This was -- you were asked by your counsel, "Did you
18 review the February 5, 2001, Letter of Inquiry?" And
19 you responded "yes." And at lines 12 to 15 you said,
20 "While I had a general understanding of what the LOI
21 asked, I had no specific understanding as to how those
22 questions should be analyzed and answered."

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1 And I'm wondering, how did you acquire an
2 understanding of how to answer those questions in your
3 -- that you indicated you answered in your March 8th
4 memo, EB Exhibit 21?

5 A I looked at the documents in the ownership
6 report file, tried to match that up with the request
7 in the Letter of Inquiry. I was gaining an
8 understanding of the narrative through both Bill and
9 my initial discussions with Mr. Sanchez.

10 Q Moving down farther on that page, lines 19
11 to 25, if you'll just hold those -- it says that -- it
12 confirms that you had your discussions with Mr.
13 Sanchez, and that during the next several weeks, over
14 the course of conversations with Ernie and his
15 partner, Susan Jenkins, as well as discussions with
16 Bill and others at the station, you came to learn of
17 the obstacles the station confronted following the
18 earthquake of 1989, up through and including the
19 foundation of Golden Gate Public Radio Group and their
20 petition to deny the renewal application.

21 Now, in your direct testimony, you're
22 saying that you acquired that knowledge during the

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1 next several weeks. But within your first week at the
2 station, by March 8th, you had been able to formulate
3 a response and include information about the 1989
4 earthquake.

5 So I'm just wondering -- did you mean in
6 your direct testimony during the next several weeks,
7 or during several days, leading up to March 8th, that
8 you acquired that knowledge?

9 A Specifically about the Loma Prieta
10 earthquake?

11 Q Well, let's start with that, yes.

12 A I had experienced the Loma Prieta
13 earthquake, so I understood that parts of the city had
14 been demolished.

15 Q Did you understand that --

16 A That was not a long, intensive narrative
17 for me to understand, about the Loma Prieta
18 earthquake.

19 Q How did you acquire a knowledge of how the
20 1989 earthquake affected KALW?

21 A Through a narrative about moving --
22 needing the move the station to a new location.

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1 Q And was that within your first week of
2 employment?

3 A The general points about it, yes.

4 Q What other obstacles did you learn that
5 the station confronted following the earthquake of
6 1989?

7 A It's a big deal to move a station. So I
8 learned about the engineering obstacles they faced.
9 They were relocated to temporary quarters. I seem to
10 remember they had to move several times, and yet they
11 still had to maintain broadcasting.

12 Q Okay. Thank you. Now, referring back to
13 EB Exhibit 21, your March 8th memo to Mr. Sanchez
14 regarding the FCC letter, what did you do -- what did
15 you do with the letter once you completed it? The
16 memo, rather.

17 A I put it in an envelope, addressed it to
18 Mr. Sanchez, FCC counsel, and put it in the mail.

19 Q Did you share it with anybody else?

20 A I don't recall sharing it with anybody
21 else. I didn't cc anybody on it.

22 Q Maybe would you have shared it with your

1 boss, Jackie Wright?

2 A No.

3 Q How about Mr. Helgeson?

4 A I can't be sure. I'm sorry.

5 Q Did you keep a copy for your files?

6 A Regrettably, I did not.

7 Q Did you keep an electronic copy?

8 A I depended on the fact at the time that my
9 computer -- I saved the document, so it was in my
10 computer.

11 Q And was it on your computer at the time
12 that you were deposed on September 28, 2004?

13 A I wasn't aware that it was at the time,
14 because that hard drive -- the original hard drive I
15 was given had died. However, actually, it was.

16 Q Thank you. Now I'd like to move on to EB
17 Exhibit 20, which is a second March 8, 2001, memo.
18 Ms. Sawaya, have you seen this document before?

19 A I have.

20 Q And do you recall that you wrote it?

21 A I did write it.

22 Q It's from you to Mr. Sanchez re

1 enclosures. Do you know what enclosures you included
2 with this memo?

3 A I believe we included the originals of the
4 ownership reports.

5 Q And those ownership reports were attached
6 to your other March 8, 2001, memo to Mr. Sanchez, EB
7 Exhibit 21, is that correct?

8 A That is correct.

9 Q So this was really a cover letter, then,
10 to the memo we just finished discussing?

11 A Correct.

12 Q When it says great -- I'm looking at the
13 first paragraph, the first line, and you say, "Great
14 speaking with you the other day." Do you recall when
15 you would have spoken with Mr. Sanchez?

16 A Not really. Within the first few days of
17 my arrival to KALW.

18 Q Okay. In the second paragraph, second
19 sentence, you state that the challenge cost the
20 station a lot of money. How did you know at the time
21 how much money it cost the station?

22 A I was giving a look at the audit as I was

1 preparing the CPB financial report for 1999. I saw
2 the encumbrance that the station made to hire FCC
3 counsel, and that encumbrance, on an annual basis, was
4 a lot.

5 Q Do you recall when you looked at that
6 audit?

7 A Probably in my first week, as I was
8 attempting to be timely in the response to the
9 Corporation for Public Broadcasting in their financial
10 paperwork for their --

11 Q Okay.

12 A -- financial paperwork.

13 Q What time did the '99 report cover? What
14 time period?

15 A Actually, it's a year back, so it would be
16 fiscal year '98. But everybody's fiscal year is a
17 little off. There's a federal fiscal year, there's a
18 fiscal year that the district goes under, there's your
19 standard taxpayer fiscal year.

20 Q So what part of 1998 would that report
21 have covered? What months in 1998?

22 A I imagine that it was -- it would have

1 been from July 1998 through end of June 1999. Well,
2 no, it would have been July 1997 through end of June
3 1998, and parts beginning into 1999 as well.

4 Q Okay. When you speak about, in that same
5 sentence, it has cost the city -- it has cost the
6 station much money and grief, what were you referring
7 to when you mentioned grief?

8 A The stress on the station and the
9 licensee.

10 Q And who specifically at the station was
11 stressed?

12 A Well, a lot of people were stressed.

13 Q Okay. Well, was Mr. Helgeson stressed?

14 A In his own way.

15 (Laughter)

16 Q I won't explore that any further.

17 (Laughter)

18 Who else at the station might have been
19 stressed?

20 A Perhaps some of --

21 Q Was Dr. Ackerman stressed? I'm sorry.
22 Was Dr. Ackerman stressed?

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1 A I'm sure once she became cognizant of the
2 details of the license challenge, yes.

3 Q And is that what you were referring to on
4 March 8th?

5 A No.

6 Q Okay. How about Jackie Wright? Was
7 Jackie Wright stressed?

8 A Jackie, like me, wanted to know as much as
9 possible, as she was new to the district and realized
10 that this would be a big hurdle and was very serious
11 for the station.

12 Q Would it have stressed Mr. Ramirez?

13 A He wasn't there.

14 Q I'd like to refer your attention to SFUSD
15 Exhibit T-3 -- it was your direct testimony -- on
16 page 5. And I'm specifically referencing lines 1
17 through 6. And the question to which you responded
18 was, "How do you come to work at KALW?" And in line
19 -- starting on line 4 you stated, "I knew Jeff," and
20 I'm assuming you're referring to Mr. Ramirez, because
21 he's referenced in the previous sentence, "from a
22 program that we both called Next Generation Project,

1 and our paths have crossed many times since."

2 When you say that your paths have crossed
3 many times since, what did you mean by that?

4 A At radio -- public radio conferences. My
5 direct testimony is from 2004/2005, and over those
6 years Mr. Ramirez has been working at the Corporation
7 for Public Broadcasting, and we would see each other
8 at conferences.

9 Q Would you ever talk about his experience
10 at station KALW?

11 A No, I did not.

12 Q All right. Going back now -- one moment.
13 EB 20, EB Exhibit 20, your cover memo, March 8th memo.
14 Looking at the third paragraph -- I'm sorry. Let's
15 back up one paragraph to paragraph 2, and that's the
16 last sentence. You say, "I believe GGPR has
17 evaporated. Sad."

18 On March 8, 2001, how did you come to
19 believe that GGPR had evaporated?

20 A Part of that was through Mr. Sanchez, and
21 part of that was through, again, Mr. Helgeson, and
22 maybe one of the announcer operators that has been